

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO. 840 OF 2006

IN

NOTICE OF MOTION NO. 850 OF 2005

IN

B.C.C.C. S.C. SUIT NO. 5326 OF 2004

WITH

CIVIL APPLN. NO.1158 OF 2006

SAMSHERSINGH .. APPELLANT

VS.

SHRI PARASNATH LAXMAN .. RESPONDENT

Mr. Anil Singh for the appellant.

Mr. Manish Mistry for M.M.Vashi for Respondent.

CORAM: A.M.KHANWILKAR, J.

DATE : 12th February, 2007.

P.C.

1. Heard Counsel for the parties.

2. Admit.

3. As short question is involved, the Appeal is taken up for final disposal forthwith by consent. Mr. Manish waives notice for final disposal on behalf of the Respondent.

4. This Appeal from Order takes exception to the Judgment and Order passed by the City Civil Court, Bombay, dated 5th November, 2006 in Notice of Motion No.840 of 2005. By the said Notice of Motion which was taken out in Suit, the Respondent-plaintiff prayed as under :-

"(a) That pending the hearing and final disposal of the suit, the Defendant be committed to civil prison for a period of three months or such other period as this Hon'ble Court may deem fit under Order XXXIX Rule 2A of the CPC for committing breach of the Order dated 9.11.2004 inasmuch as on 10.12.2004 at about 3.00 P.M. the Defendant got illegal possession of the suit premises by removing the Plaintiff's wife and nephew from the suit premises falsely representing that there is a court's order to vacate the suit premises, with the prior arrangement with the police of Gondewali Police

chowky and locking up the premises after removing the belongings of the Plaintiff from the suit premises;

(b) That pending the hearing and final disposal of the suit, the defendant be ordered and directed to restore status-quo by ordering and directing him to give possession of the suit premises to the Plaintiff by removing the lock put by him on the suit premises;

(c) That ad-interim reliefs in terms of prayers (a) and (b) above be granted;

(d) That the costs of the Notice of Motion be provided for;

(e) Such other and further reliefs be granted as the court may deem fit and proper."

5. The trial Court, on analysing the pleadings on record, dismissed the Notice of Motion insofar as prayer clause (a) is concerned. It proceeded to grant the same in relation to prayer clause (b). The operative order of the trial Court passed on the Notice of Motion which is impugned in this Appeal reads thus :-

"ORDER

A) Plaintiff's motion is dismissed so far as prayer clause (a) is concerned.

B) Pending the hearing and final disposal of this suit, the defendant is directed to restore to the plaintiff the possession of the suit premises as per prayer clause (b).

C) Once the plaintiff is put in possession of the suit premises, the defendant shall not dispossess and or interfere with possession of the plaintiff in respect of the suit premises save and except by due process of law. This order shall remain in operation till the disposal of suit.

D) Defendant do pay to the plaintiff quantified cost of Rs.2,000/-. Cost condition precedent for future proceedings in this suit.

E) The operation of this order is stayed till 10.12.2006. Till the possession of the suit premises is restored to the plaintiff, the defendant shall not transfer and or create third

party rights and or part that possession of respect of suit premises.

F) If the defendant institutes proceedings challenging this order, the defendant shall serve the compilation of the same upon Mr. M.P. Vashi, learned advocate for the plaintiff, give 48 hours notice and then move the Hon'ble High Court for appropriate order."

6. The main argument canvassed before this Court is questioning the correctness of the order passed by the trial Court directing the defendant-appellant to restore to the plaintiff possession of the suit premises as per prayer clause (b) of the Notice of Motion. It is submitted that the said relief clearly travels beyond the scope of the suit as filed by the plaintiff. In the suit, the plaintiff asked for the limited relief which is as under :-

"(a) That the Hon'ble Court be pleased to declare that the threat given by the defendant for demolishing the suit wall is illegal and unlawful.

(b) That the defendants his family members, servants, agent, person/s claiming through them

be permanently restrained by an order of injunction of this Hon'ble Court from demolishing the suit wall i.e. common wall between suit premises and the flour mill premises as more particularly in Exhibit-E colly.

(c) Pending the hearing of final disposal of suit interim and ad-interim reliefs in terms of prayer (c) herein above.

(d) Cost of this suit be provided for;

(e) for such other and further relief as the nature and circumstances of the case may require be granted."

The substantive relief in the suit is for permanent injunction against the defendant and his family members from demolishing the suit wall i.e. common wall between suit premises and the flour mill premises. It is common ground that the suit wall is intact even as of now. However, the trial Court on the basis of the report submitted by the Commissioner, proceeded to record that the plaintiff has been dispossessed from the stated premises on the ground floor admeasuring about 60 sq. ft. and, therefore, proceeded to grant relief in terms of prayer clause (b) against the defendant. This direction, it is rightly submitted on behalf of the

appellant-defendant, clearly travels beyond the scope of the main relief claimed in the suit. There is substance in the argument of the appellant-defendant that the grievance of the respondent-plaintiff is one of dispossession from some other premises than the suit premises (suit wall). The plaintiff will have to take recourse to appropriate remedy as may be available in law, but that cannot be made subject matter in the present proceedings.

7. Accordingly, this Appeal ought to succeed on this limited count. The direction given by the trial Court against the defendant-appellant to restore the said ground floor premises to the respondent-plaintiff will have to be set aside. Accordingly, this Appeal succeeds with liberty to the respondent-plaintiff to take recourse to such other remedy as may be permissible by law in respect of the premises referred to in the Notice of Motion.

8. In view of the order in the Appeal, the companion Civil Application stands disposed of.

--

(A.M.KHANWILKAR, J.)